IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE Nos 287 and 287-A of 1992

For Approval and Signature:

HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE M.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

COMMISSIONER OF INCOME-TAX

Versus

NIPPON ENGG. & MOULDING WORKS

Appearance:

1. INCOME TAX REFERENCE No. 287 of 1992

MR MANISH R BHATT for Petitioner No. 1

SERVED BY RPAD - (N) for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE M.C.PATEL

Date of decision: 19/02/2004

COMMON ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE M.S.SHAH)

In these references at the instance of the revenue under Section 256(1) of the Income-tax Act, 1961, the following questions have been referred for our

opinion for assessment years 1984-85 and 1985-86 :-

"1. Whether, the Tribunal is right in law and on facts in holding that unpaid sales tax could not be added u/s. 43B of the I.T. Act, 1961 ?

2. Whether, the Tribunal is right in law and on facts in setting aside the order of the CIT on the point of unpaid Sales Tax?

2. Whether, the Tribunal is right in law giving retrospective effect to be the proviso which is inserted by the Finance Act, 1987 with effect from 1.4.1988 ?"

2. We have heard Mr Manish R Bhatt, learned standing counsel for the revenue. Though served, none appears for the respondent-assessee.

3. Our attention has been invited to the decision of the Apex Court in Allied Motors (P) Ltd. vs. CIT, (1997) 224 ITR 677 which has squarely concluded the controversy in favour of the assessee.

4. Applying the ratio of the aforesaid decision, our answer to all the three questions is in the affirmative i.e. in favour of the assessee and against the revenue.

The references accordingly stand disposed of.

(M.S. Shah, J.)

(M.C. Patel, J.)

sundar/-